Exhibit F

Warr, J. Nicci

Subject: FW: Eddingston, et al. v. UBS Financial Services Inc. and Hendricks, et al. v. UBS Financial Services Inc. (Case Nos. 12-cv-422, 12-cv-606; E.D. Tex.)
Attachments: Eddingston v. UBS & Hendricks v. UBS - Letter re Responses to Plaintiffs' Request for Production.pdf; Eddingston v. UBS - Amended Request for Production.pdf

From: voconl@gmail.com [mailto:voconl@gmail.com] **On Behalf Of** Victor O'Connell
Sent: Friday, April 19, 2013 11:17 AM
To: Scalia, Eugene
Cc: Robert E. Goodman, Jr.; Theodore Anderson; Brendan Maher; Peter Stris
Subject: Eddingston, et al. v. UBS Financial Services Inc. and Hendricks, et al. v. UBS Financial Services Inc. (Case Nos. 12-cv-422, 12-cv-606; E.D. Tex.)

Hi Gene,

Attached please find a letter from Peter Stris regarding Plaintiffs' first request for production of documents in *Eddingston, et al. v. UBS Financial Services Inc.* and *Hendricks, et al. v. UBS Financial Services Inc.* (Case Nos. 12-cv-422, 12-cv-606; E.D. Tex.).

Regards,
Victor O'Connell

Victor O'Connell | Stris & Maher LLP
19210 S. Vermont Ave., Bldg. E | Gardena, CA 90248
4144 N. Central Expy., Ste. 1230 | Dallas, TX 75204
Tel: 657.464.0464 | Fax: 424.212.7001
Email: victor.oconnell@strismaher.com | Website: www.strismaher.com

STRIS & MAHER LLP

PETER K. STRIS
Tel 424.212.7090
Fax 424.212.7001
peter.stris@strismaher.com

Admitted in California & New York
Not admitted in Texas

VIA EMAIL AND U.S. MAIL

Eugene Scalia
Gibson, Dunn & Crutcher, LLP
1050 Connecticut Avenue, NW
Washington, DC 20036

Re: *Eddingston, et al. v. UBS Financial Services Inc.* and *Hendricks, et al. v. UBS Financial Services Inc.* (Case Nos. 12-cv-422, 12-cv-606; E.D. Tex.)

Dear Gene:

I am writing with regard to Defendant's Objections and Responses to Plaintiffs' First Request for Production of Documents to Defendant UBS Financial Services Inc., dated March 19, 2013 ("RFP Response"). Although the RFP Response and associated production were prepared and served before your firm was retained in this case, I assume you are aware of its substance.

As I promised when we spoke, I'm writing to explain why the RFP Response and anemic production of your prior counsel ("Prior Counsel") is obviously deficient. My sincere hope is that we can resolve this issue cooperatively without the need for motion practice.

The Production Is Facially Deficient

According to your own admission, this litigation involves nearly 2,000 potential class members who collectively experienced forfeitures of more than $200 million. *See* Plaintiffs' Surreply to Defendant's Motion to Stay Proceedings Pending Reconsideration and, if Necessary, an Appeal at 3 (citing and attaching April 10, 2013 letter of Paul Blankenstein). To date, however, *only 321 pages of documents have been produced.* Indeed, most of these pages were already exhibits to briefs filed in this case. It is impossible to believe that, in a case of this size and complexity, there are only 321 pages of responsive documents in the possession, custody, or control of your client.

It is unclear to us whether this deficient production is result of claims of privilege, misapprehension of the scope or nature of the Requests, or intentional failure to comply with the discovery rules. Nevertheless, we hope that you can correct any errors made by Prior Counsel. Moreover, to the extent that UBS has withheld documents on the basis of privilege, we ask that you produce a privilege log so that we can evaluate your position on that issue.

The Response to Request for Production No. 5 Is Particularly Troubling

In your opposition to our pending motion for class certification ("Certification Motion"), you argue as follows: "If PartnerPlus is not an ERISA plan, the class waiver in the Compensation Plan cannot be an illegal amendment, and must be enforced. Plaintiffs have not *proved* that PartnerPlus is an ERISA plan, nor could they." Defendant UBS Financial Services, Inc.'s Opposition to Plaintiffs' Motion for Class Certification in *Eddingston, et al., v. UBS Financial Services Inc.* at 5 ("Opposition to Certification Motion") (emphasis in original).

To be sure: we do not agree with your legal position. That said, we are attempting to use the discovery process to obtain the evidence necessary to establish precisely what you insist is our burden. For example, we requested the following:

> REQUEST FOR PRODUCTION NO. 5: All documents relating to any contention by Defendant that the PartnerPlus Plan for Financial Advisors is not subject to the Employee Retirement Income Security Act or to its, minimum vesting, anti-forfeiture and separate funding provisions.

Plaintiffs' First Request for Production of Documents to Defendant UBS Financial Services Inc. at 3. As the RFP Response makes clear, Prior Counsel refused to produce any documents responsive to this request. To justify that position, Prior Counsel asserted four baseless objections. The first two are complete. The latter two appear to be partial.

First, Prior Counsel objected to this request "on the grounds that it is premature, as such contention discovery is inappropriate at this early stage of discovery." RFP Response at 8. This objection is hard to take seriously. Your client has argued that our Certification Motion must be denied because we "have not *proved* that PartnerPlus is an ERISA plan." Opposition to Certification Motion at 5 (emphasis in original). Your client cannot seriously deny, in the same breath, that we are entitled to discover the very documents that will determine that issue.

Second, Prior Counsel objected to this request "on the grounds that it is overly broad, unduly burdensome and vague with respect to the phrase 'relating to any contention." RFP Response at 8. To be frank, I don't understand the basis for this objection. In the spirit of cooperation, however, I have drafted (and attached) an amended request for production that carefully describes the documents that we are requesting without reference to any legal "contention." If you prefer, we will formally propound this second request for production. It should not be required, however, because it merely describes – with greater particularly – categories of documents that we have already properly requested.

Third, Prior Counsel has objected to this request "to the extent it seeks information or communications protected by the attorney-client or attorney work product privilege." *Id.* But Prior Counsel did not, as required by the Federal Rules, identify which responsive documents are being withheld "in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim." Fed. R. Civ. P. 26(b)(5)(A). This is quite important in this case. As I'm sure you appreciate, we are likely to disagree on the extent to which the fiduciary exception to the attorney client privilege applies in this case. I cannot discuss and, if necessary, litigate scope-of-privilege issues with you unless you identify what documents are being withheld on that basis.

Finally, Prior Counsel objected to this request "to the extent it seeks information beyond the time frame of August 3, 2008 (four years before plaintiffs filed their original Complaint) through December 31, 2010 (the last date of the alleged class period pled in the Amended Complaint)." RFP Response at 8. That objection is improper. As you know, the question of ERISA coverage is determined under a "facts and circumstances" test. *See* 29 U.S.C. § 1002(2)(a). *See also* ERISA Op. 98-02A, 1998 WL 103654 ("The question of whether a plan, fund, or program is a pension plan as a result of surrounding circumstances is inherently factual in nature . . . ."). As we have repeatedly noted, the relevant plan in this litigation was initially established (and self-described) as an ERISA-governed retirement plan. In 1998, the plan was amended and restated to claim that it is not an ERISA plan. And then, in 2011, the plan was again amended and restated to claim that it is an ERISA-governed plan. Documents pertaining to the relevant plan before and after the class-period are, therefore, unquestionably relevant to whether an ERISA plan has been established by surrounding circumstances. *See* 29 U.S.C. § 1002(2)(a).

With regard to next steps, I suggest the following: Please let me know immediately if you would like us to propound a formal version of the amended document requests that I have attached. If so, I will do so immediately. If not, please let me know the following:

- When can we expect a supplemental production of documents?
- When can we expect a privilege log?
- To which of our six requests, if any, have documents been withheld on relevance grounds?
- To which of our six requests, if any, have documents been withheld on vagueness grounds?
- To which of our six requests, if any, have documents been withheld on overbreadth grounds?
- To which of our six requests, if any, have documents been withheld on burden grounds?
- To which of our six requests, if any, have documents been withheld on prematurity grounds?

As I am sure you can understand, answers to the above questions are required so that we can – if necessary – prepare a motion to compel production.

Sincerely,

Peter K. Stris

cc: Brendan S. Maher (brendan.maher@strismaher.com)
Victor O'Connell (victor.oconnell@strismaher.com)
Ted Anderson (tca@kilgorelaw.com)
Robert E. Goodman (reg@kilgorelaw.com)
Brian Bro (brian@bebroatty.com)

Attachment